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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/807,860      | 04/18/2001  | Sanjay Savur         | 50013-00001         | 6235             |

25231 7590 09/05/2003

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/807860

Applicant(s)

SAVUR ETAL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on 6/13/2003

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1, 3, 5, 10-12, 25, 26, 41, 44, 45, 49, 62, 82, 117, 120, 122-125, 129, 132, 143, 146, 153, 155 is/are pending in the application.

Of the above claim(s) 41, 44, 45, 49, 62, 82, 117, 120, 122-125, 129, 132 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3, 5, 10-12, 25, 26, 143, 146, 153, 155 -160 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 10-12, 25, 26, 143, 146, 147, 148 and 153-160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huston (WO 91/15719) in view of Samuel (EP 353021), Bishop (WO 95/05753), Fukada (Jp 2-82083) and Lovegrove et al (EP 136042) essentially for the reasons fully and clearly detailed in the Office action mailed 3/14/03, Paper no. 9.

The claims now recite—"and without monitoring of carbon dioxide concentrated within the chamber, removing the carbon dioxide from the chamber atmosphere ..."  
Huston discloses monitoring both oxygen and carbon dioxide. However, Lovegrove et al discloses that "preferably," the carbon dioxide level is also monitored. Thus, Lovegrove et al discloses that carbon dioxide can be eliminated without carbon dioxide monitoring. Lovegrove et al thus teaches it is preferred but not critical. As further evidence that this is a correct interpretation of the reference, Lovegrove states that "at least" oxygen level is continuously monitored. This would make perfect sense to one of ordinary skill in the art, since, as evidenced, for example, by Lovegrove et al, whereas there is a critical minimum amount of oxygen concentration necessary for increased shelf life, there is no minimum amount of carbon dioxide level. Therefore, one could provide an amount of carbon dioxide absorber to allow the concentration to go to 0% carbon dioxide. The oxygen content should not be allowed to go to zero. Therefore, in

Art Unit: 1761

view of <sup>the</sup> art, taken as a whole, it would have been obvious to monitor oxygen and eliminate carbon dioxide without monitoring the carbon dioxide.

All of applicants' remarks filed 6/13/03, paper no. 10 have been fully and carefully considered but are not found to be convincing, and, in fact, are moot in view of the newly presented argument necessitated by applicants' amendment. One point is to be noted. Applicants have argued that Bishop (WO '753) monitors the carbon dioxide, but it does not appear that this is accurate. Bishop eliminates carbon dioxide but there does not appear to be any discussion of monitoring the carbon dioxide.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Steven Weinstein/mn  
September 3, 2003

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
9/5/03